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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ARRION DONTA WRIGHT,

Case No. 3:19-cv-00408-LRH-CBC

10 Petitioner,

ORDER

11 v.

12 RENEE BAKER, et al.,

13 Respondents.

14 Arrion Donta Wright submitted a pro se 28 U.S.C. § 2254 habeas corpus petition
15 and has now paid the filing fee (ECF Nos. 1-1, 5). The petition shall be dismissed as
16 untimely.

17 The Antiterrorism and Effective Death Penalty Act (AEDPA) went into effect on
18 April 24, 1996, and imposes a one-year statute of limitations on the filing of federal
19 habeas corpus petitions. 28 U.S.C. § 2244(d). The one-year time limitation can run
20 from the date on which a petitioner's judgment became final by conclusion of direct
21 review, or the expiration of the time for seeking direct review. 28 U.S.C.
22 § 2244(d)(1)(A). Further, a properly filed petition for state postconviction relief can toll
23 the period of limitations. 28 U.S.C. § 2244(d)(2).

24 A petitioner may be entitled to equitable tolling if he can show “(1) that he has
25 been pursuing his right diligently, and that (2) some extraordinary circumstance stood in
26 his way’ and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2009)
27 (quoting prior authority). Equitable tolling is “unavailable in most cases,” *Miles v.*
28 *Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999) and “the threshold necessary to trigger

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2 equitable tolling is very high, lest the exceptions swallow the rule,” *Miranda v. Castro*,
3 292 F.3d 1063, 1066 (9th Cir. 2002) (quoting *United States v. Marcello*, 212 F.3d 1005,
4 1010 (7th Cir. 2000)). The petitioner ultimately has the burden of proof on this
5 “extraordinary exclusion.” 292 F.3d at 1065. He accordingly must demonstrate a
6 causal relationship between the extraordinary circumstance and the lateness of his
7 filing. *E.g.*, *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir. 2003). Ignorance of the one-
8 year statute of limitations does not constitute an extraordinary circumstance that
9 prevents a prisoner from making a timely filing. *See Rasberry v. Garcia*, 448 F.3d 1150,
10 1154 (9th Cir. 2006) (“a *pro se* petitioner’s lack of legal sophistication is not, by itself, an
11 extraordinary circumstance warranting equitable tolling”).

12 In his federal petition, Wright states that the judgment of conviction he seeks to
13 challenge—Case No. 278988-2—was entered in February 2013 (ECF No. 1-1, pp. 4, 9).
14 He did not file a direct appeal, and therefore, his conviction became final 30 days later.
15 The docket of the Nevada Court of Appeals reflects that Wright filed a state
16 postconviction habeas corpus petition more than 5 years after the judgment of
17 conviction was entered. Nevada Court of Appeals Case No. 76104. Wright claimed in
18 his state petition that his sentence enhancement for robbery with use of a deadly
19 weapon violates his federal constitutional rights to a fair trial, equal protection, and to be
20 free from double jeopardy. The Nevada Court of Appeals affirmed the denial of the
21 petition as untimely and therefore procedurally barred. *Id.*

22 Here, Wright acknowledges that his federal petition is untimely. He states, with
23 no elaboration whatsoever, that he can demonstrate cause and prejudice to overcome
24 the procedural default.

25 In all cases in which a state prisoner has defaulted his federal claims in
26 state court pursuant to an independent and adequate state procedural
27 rule, federal habeas review of the claims is barred unless the prisoner can
28 demonstrate cause for the default and actual prejudice as a result of the
alleged violation of federal law, or demonstrate that failure to consider the
claims will result in a fundamental miscarriage of justice.

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2 *Coleman v. Thompson*, 501 U.S. 722, 750 (1991); *see also Murray v. Carrier*, 477
3 U.S. 478, 485 (1986).

4 To demonstrate cause for a procedural default, the petitioner must be able to “show
5 that some objective factor external to the defense impeded” his efforts to comply with
6 the state procedural rule. *Murray*, 477 U.S. at 488 (emphasis added). For cause to
7 exist, the external impediment must have prevented the petitioner from raising the
8 claim. *See McCleskey v. Zant*, 499 U.S. 467, 497 (1991).

9 In federal habeas cases arising out of Nevada, the state courts, generally, apply
10 substantially the same standards as the federal courts in determining whether a
11 petitioner can demonstrate either cause or actual innocence in order to overcome a
12 claimed procedural default. Thus, if the petitioner had no viable cause-and-prejudice or
13 actual-innocence argument under the generally substantially similar federal and state
14 standards, then the federal habeas claim is also subject to immediate dismissal with
15 prejudice as procedurally defaulted. And again, while Wright included the cause and
16 prejudice standards in his petition, he set forth no specific arguments as to how he
17 could demonstrate cause and prejudice. He merely invokes the terms cause and
18 prejudice and then argues his double jeopardy claim. Accordingly, the petition is
19 dismissed.

20 **IT IS THEREFORE ORDERED** that the petition is **DISMISSED** with prejudice as
21 untimely.

22 **IT IS FURTHER ORDERED** that a certificate of appealability is denied.

23 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and
24 close this case.

25 DATED this 28th day of October, 2019.

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28 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE